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of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4574, Feb. 5, 1986. Redesignated and amended at 52 FR 1902, Jan. 16, 1987]

§§1041.171–1041.999 [Reserved]

PART 1045—NATIONAL SECURITY INFORMATION

Subpart A—Classification and Declassification

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AUTHORITY: E.O. 12356 (47 FR 14874) April 6, 1982; Information Security Oversight Office Directive No. 1 (47 FR 27836) June 25, 1982.

SOURCE: 49 FR 27738, July 6, 1984, unless otherwise noted.

Subpart A—Classification and Declassification

§ 1045.1 Purpose.

This part establishes policy and procedures to be followed within the Department of Energy (DOE) for the classification and declassification of National Security Information (NSI) to the extent that they affect members of the public. Procedures are established for the submission of mandatory declassification review requests to the DOE made pursuant to section 3.4 of Executive Order (E.O.) 12356, "National Security Information," April 2, 1982. Instructions for submitting sugges-

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tions or complaints regarding the DOE's information security program are given.

§ 1045.2 Scope.

This part applies to the original classification and declassification of NSI and the derivative classification and declassification of documents or other material containing or revealing NSI within the DOE and its contractor and subcontractor organizations. Accordingly, Restricted Data and Formerly Restricted Data classified pursuant to the Atomic Energy Act of 1954, as amended, are outside the scope of this part.

§ 1045.3 Definitions.

(a) *Declassification* means a determination that previously classified information, documents, or other material that contain or reveal such information no longer require protection against unauthorized disclosure in the interest of national security.

(b) *Document* means any recorded information regardless of its physical form or characteristics.

(c) *Information* means any knowledge or facts, distinct from its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(d) *Material* means any product or substance on or in which information is embodied.

(e) *National Security Information* (NSI) means information that has been determined pursuant to E.O. 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

§ 1045.4 Responsibilities and authorities.

(a) The Assistant Secretary for Defense Programs is responsible for making final determinations on appeals submitted by individuals who have been denied all or part of documents or other material containing or revealing

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NSI requested under the Mandatory Review for Declassification provisions of this regulation.

(b) The Director of Classification is designated as the Senior Agency Official to direct and administer the Department's information security program, as required by section 5.3(a) of E.O. 12356. In addition, the Director of Classification is responsible for making initial denials of requests submitted by eligible individuals for documents or other material containing or revealing NSI requested under the Mandatory Review for Declassification provisions of this regulation.

§ 1045.5 Policy.

(a) It is DOE policy to classify as NSI, in accordance with the provisions of E.O. 12356, information concerning the national defense and foreign relations of the United States which, in the interests of the United States and its citizens, must be protected against unauthorized disclosure.

(b) It is DOE policy that only individuals specifically authorized to do so by the Secretary of Energy or his designee may originally classify or declassify information or derivatively classify or declassify documents or other material. Those who possess such authority must ensure that their determinations are made upon proper authority, are in compliance with E.O. 12356 and its implementing directives, appropriate statutes, and Departmental regulations, and are consistent with approved classification policy and guidance.

§ 1045.6 Mandatory review for declassification.

(a) Except as provided in section 3.4(b) of E.O. 12356, all information classified under E.O. 12356 or its predecessor orders (i.e., National Security Information) is subject to a review for declassification by the originating agency, if the request:

(1) Is made by a United States citizen or permanent resident alien, a Federal agency, or a State or local government;

(2) Describes the document or material containing or revealing the NSI in question with sufficient specificity to enable it to be located with a reasonable effort; and

(3) Is sent to the Director of Classification, U.S. Department of Energy, Washington, DC 20545.

(b) Requests for mandatory declassification reviews will be processed as follows:

(1) *Invalid requests.* The requester will be notified promptly by the Office of Classification when his or her request is not valid. This notification letter will contain the reasons why the request cannot be processed and, if applicable, what additional information is needed to allow processing of the request.

(2) *Valid requests.* Upon receipt of a valid request for mandatory declassification review, the Office of Classification shall do the following:

(i) Contact all appropriate organizations within the Department requesting that their files be searched for documents and material responsive to the request.

(ii) Based on the results of the above search, determine if estimated review and coordination time required to process the request precludes a prompt declassification determination, and if so, inform the requester of the additional time needed to process the request.

(iii) Review the documents or other material responsive to the request and determine whether or not the NSI under the purview of the Department contained in or revealed by the documents or other material can be declassified.

(iv) Coordinate with other agencies the review of documents or other material originated by the Department that are responsive to the request and that contain information under the purview of those agencies.

(v) After deletion of all NSI under the purview of the Department, forward a copy of any documents or other material originated by another agency to that agency for further processing and direct response to the requester, including a copy of the request together with recommendations for action and, after consultation with the originating agency, inform the requester of the referral.

(vi) Transmit to the requester the final determination of the Director of Classification as to whether all or part

of any documents or other material responsive to the request may be released to the requester. This determination must be made within one year from the date of receipt of the request except in unusual circumstances (e. g., delays caused by coordination of the review of responsive documents or other material originated by the Department with agencies having purview over information contained in or revealed by the documents or other material).

(vii) In those cases where a fee (see 10 CFR 1004.9 for schedule of fees charged for documents or material provided to requesters) is to be charged, notify the requester of the estimated amount of the fee and await confirmation by the requester of willingness to pay the fee.

(viii) In those cases where no fee is to be charged, or where the requester has agreed to pay the fee, and consistent with other applicable law, send the requester copies of declassified documents or other material or declassified portions of classified documents or other material that constitute coherent segments.

(ix) In those cases where all or part of documents or other material responsive to a request cannot be declassified, notify the requester that he or she has the right to administratively appeal the denial within 60 days of receipt of the denial letter. The requester should be notified that the appeal shall specify why the requester believes that the information in question does not warrant classification and, if possible, should include copies of the initial request letter and the denial letter from the Director of Classification. The appeal should be sent to the Assistant Secretary for Defense Programs, U.S. Department of Energy, Washington, DC 20545.

(c) Appeals of denials of mandatory declassification review requests.

(1) Immediately upon receipt of an appeal request, an ad hoc committee will be assembled and headed by a representative from the Office of the Assistant Secretary for Defense Programs and made up of representatives from any Department organizations that have an interest in the subject of the appeal.

(2) The Office of Classification will provide the committee all information,

documents, and any other assistance pertinent to the appeal, and will advise the committee with regard to the classification of the information involved.

(3) The committee will review the basis for the denial and transmit its findings and recommendations to the Assistant Secretary for Defense Programs within 15 working days following receipt of the appeal.

(4) Based on the committee report, the Assistant Secretary for Defense Programs shall make a final determination on the appeal within 25 working days following receipt of the appeal. The head of the committee then shall notify the requester, within 30 working days following receipt of the appeal, in writing, of the final determination. Based on this determination and consistent with other applicable law, copies of declassified documents or other material or declassified portions of classified documents or other material responsive to the request will be released to the requester, upon payment of any required fees, and/or the requester will be given a statement as to why some or all of the documents or other material cannot be declassified.

§ 1045.7 Suggestions or complaints.

Any individual who has suggestions or complaints regarding the Department's information security program may direct them in writing to the Director of Classification, U.S. Department of Energy, Washington, DC 20545. Such letters should include a description of the issue or problem, the suggestion or complaint, all applicable background information, and an address to which a response may be sent. The Office of Classification will review such submissions and will respond to the originator of the suggestion or complaint letter.

PART 1046—PHYSICAL PROTECTION OF SECURITY INTERESTS

Subpart A—General

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